

**CALENDAR ITEM
C28**

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04/05/16

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PRC 5621.1
G. Asimakopoulos

**GENERAL LEASE – RECREATIONAL AND
PROTECTIVE STRUCTURE USE**

APPLICANT:

Neil E. Kelly and Mary Jo Kelly, Trustees of the Kelly Family Revocable Trust

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 3575 Garden Highway, near the city of Sacramento, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of an existing covered single-berth floating boat dock, boat lift, gangway, six pilings, electric utility outlet, and bank protection.

LEASE TERM:

10 years, beginning August 24, 2016.

CONSIDERATION:

Covered Single-Berth Floating Dock, Boat Lift, Gangway, Six Pilings, and Electric Utility Outlet: \$833 per year, with an annual Consumer Price Index adjustment.

Bank Protection: The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

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Public Trust and State's Best Interests Analysis:

The subject dock and appurtenant facilities are for the docking and mooring of boats. Recreational boating is water-dependent and is generally consistent with the common law public trust doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of public trust lands (Pub. Resources Code, § 6503.5). The subject structures are privately owned and maintained. The adjacent upland parcel is privately owned and developed with a residence.

The dock and appurtenant facilities have existed for many years at this location; the facilities do not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years, and a non-exclusive use provision. Upon termination of the lease, the Lessee may be required to remove any improvements and restore the lease premises to their original condition. Based on the foregoing, Commission staff believes that the dock and appurtenant facilities will not substantially interfere with public trust needs, at this location, for the foreseeable term of the proposed lease.

The bank protection is consistent with the common law public trust doctrine because it serves as an aid to navigation by providing reinforced structural support to the banks of the waterway and limiting potentially harmful erosion of the bank into the waterway. The bank protection also confers benefits to the upland owner by ensuring sufficient sub-lateral support to the adjoining property. Like the dock and appurtenant facilities, the bank protection has existed for many years at this location and does not significantly alter the land or permanently alienate any State property interest. Based on the foregoing, Commission staff believes that the bank protection is consistent with the public trust doctrine. In the alternative, Commission staff believes that the bank protection will not substantially interfere with the public trust needs at this location for the foreseeable term of the proposed lease.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law public trust doctrine and in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On August 24, 2006, the Commission authorized a General Lease – Recreational and Protective Structure Use to Neil E. Kelly and Mary Jo Kelly, Trustees of the Kelly Family Revocable Trust. That lease will expire on August 23, 2016. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use.
3. Staff recommends the issuance of the proposed lease, as it promotes Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
4. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a

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categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment will not substantially interfere with the public trust needs and values at this location, is consistent with the common law public trust doctrine, and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Neil E. Kelly and Mary Jo Kelly, Trustees of the Kelly Family Revocable Trust, beginning August 24, 2016, for a term of 10 years, for the continued use and maintenance of an existing covered single-berth floating boat dock, boat lift, gangway, six pilings, electric utility outlet, and bank protection, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the uncovered single-berth floating boat dock, boat lift, gangway, six pilings, electric utility outlet: \$833 per year, with an annual Consumer Price Index adjustment; consideration for the bank protection: the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5621.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 178 patented June 10, 1869, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing covered single-berth floating boat dock, ramp, and six pilings lying adjacent to that parcel as described in Grant Deed, recorded July 5, 2000 in Book 20000605 at Page 0999 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure adjacent to said parcel.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the left bank of said river.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 02/25/16 by the California State Lands Commission Boundary Unit



EXISTING
COVERED
SINGLE-BERTH
FLOATING
BOAT DOCK
WITH BOAT LIFT

9' IMPACT
AREA

EXISTING
BANK
PROTECTION

APN 225-0260-003

SACRAMENTO
RIVER

EXISTING
PILING (6)

EXISTING
GANGWAY
4' X 65'

APPROXIMATE SHORELINE

EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 5621.1, KELLY FAMILY
REVOCABLE TRUST
SACRAMENTO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

EXISTING
COVERED
SINGLE-BERTH
FLOATING
BOAT DOCK
WITH BOAT LIFT

EXISTING
BANK
PROTECTION

9' IMPACT
AREA

APN 225-0260-003

SACRAMENTO

RIVER

EXISTING
PILING (6)

EXISTING
GANGWAY
4' X 65'

APPROXIMATE
SHORELINE

3575 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5621.1

KELLY FAMILY REVOCABLE
TRUST

APN 225-0260-003

GENERAL LEASE-
RECREATIONAL & PROTECTIVE
STRUCTURE USE
SACRAMENTO COUNTY



TS 02/25/16

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.